



THE COMMONWEALTH OF MASSACHUSETTS

WATER RESOURCES COMMISSION

Meeting Minutes for December 11, 2003

Members in Attendance:

Karl Honkonen	Designee, EOE
Marilyn Contreas	Designee, DHCD
Cynthia Giles	Designee, DEP
Gerard Kennedy	Designee, DAR
Mark Tisa	Designee, DFG
Joe McGinn	Designee, DCR
Joe Pelczarski	Designee, CZM
Richard Butler	Public Member
Frank Veale	Public Member
David Rich	Public Member
Matthew Rhodes	Public Member

Others in Attendance: Update

Mike Gildesgame	DCR
Linda Marler	DCR
Michele Drury	DCR
Vicki Gartland	DCR
Steve Garabedian	USGS
Eileen Simonson	WSCAC
Jessica Stephens	Neponset River Watershed Association
John Carney	CRWA
Anthony Zuena	SEA
Moises Pariente	Aquaria
Margaret Kearns	Riverways
Andy Marks	Mashpee Water District
Peter Newton	SEA
Sara Cohen	DCR
Susan Spears	WAA
Robert Lexander	Dedham-Westwood Water District
Nan Crossland	Dedham-Westwood Water District
Frank Hartig	DCR Legal Counsel

Agenda Item #1: Executive Director's Report

Marler provided an update on the hydrologic conditions:

- November precipitation was below normal (70% statewide). The western region received more precipitation than the eastern part of the state. The western and Connecticut River Valley regions had near normal precipitation; the eastern region had between 52-66% of normal, but the two-month total is above normal. There is no real concern about a precipitation deficit. Precipitation in December had been a bit below normal, but today it is raining quite a bit and this will bring the levels back up to normal. Last weekend a major snowstorm occurred, leaving 10-20 inches of snow over the whole Northeast. This is an unusually high amount of snowfall for this early in December. Significant river flooding from this rainfall event is not expected.
- Ground water levels are above normal in the western region; normal in eastern region; and above normal in Nantucket.
- Streamflow: The western region is above normal; parts of the southeastern region are above normal; the rest of the state is in the normal range. There has been a streamflow recession since the high amounts of rain in October, but levels are still above normal.
- Water supply reservoir levels are in the normal to above normal range for this time of the year.
- The indices do not predict any danger of drought. The long-term forecast for December is for normal to above normal temperatures and above normal precipitation and for January, February and March predictions are for normal conditions.

Honkonen gave the Executive Director's Report

- Vacancies for WRC public membership have been advertised in the Environmental Monitor. Applications from both existing members whose terms have expired and other interested parties who would like to be considered for a public member seat will be considered. Letters of interest must be submitted by the 26th of this month, along with letters of reference.
- There have been on-going discussions with the Secretary and EOE staff relative to the development of the water policy task group and having members of the WRC involved. There are no conclusions yet. Honkonen is hoping that the task force will meet early next year.
- The Department of Agricultural Resources has announced a grant program, the Agricultural and Environmental Enhancement Program, designed to fund farmers for water conservation measures and water quality improvements, including best management practices. The maximum award per farmer is \$1500. Projects must be completed by June 30, 2004. The closing date for responses is January 16, 2004. Spread the word.
- The Plainville public hearings will be held next Thursday (12/18) at 4 & 6 PM in each basin.
- Staff had expected Wilmington to use the CWMP/DEIR process as their IBT application, but this was not done. Comments have been provided to the Secretary saying that if Wilmington is planning on applying to the MWRA for water supply, IBT issues will need to be addressed in the FEIR.

- Water Assets: the Route 495 study area was divided into 5 areas and regional meetings have been held in each area. There is concern about security issues, but overall there was a good turnout.
- Work plan: As requested at the last meeting, Staff has developed a tentative calendar listing the meetings and agenda items to be discussed. The calendar runs from January to June 2004. Some are listed as “Must do” to reflect legal commitments. If Commission members have items to add, please contact Honkonen.
- Items from July’s workshop will be discussed at the end of this meeting, if time is available.

Agenda Item #2: Vote on Meeting Minutes from November and December 2001, August and September 2003

Contreas moved, with a second by McGinn to approve the minutes for November 2001, December 2001, August 2003 and September 2003. The vote was unanimous of those present.

Honkonen suggested that the items involving votes be moved up because some members had to leave early, therefore agenda Item 3 was moved to after Items 4 and 5.

Agenda Item #4: Vote on Canton’s Compliance with the Outstanding Conditions of its ITA Approval for Well #9

Drury reminded the Commission that in 1998 the WRC approved an IBT request for Canton’s Well #9. There was also an amendment to the decision in 1999, based on I/I removal conditions and how these were accounted for. Subsequently DEP required a scope for a CWMP. Canton has been working on I/I issues consistently. A presentation was given to WRC in 1999 recommending that most of the preconditions for use of this well had been met. The WRC agreed with this recommendation. At that time Canton committed to surveying of 10% of its system per year for I/I, similar to leak detection surveys. This is something MWRA is encouraging. The remaining outstanding conditions were:

- **DEP must review and approve Canton’s 1994 SSES, in light of the conditions of the IBT approval.**

Canton provided documentation indicating that DEP reviewed the 1994 SSES. DEP has stated that it did not formally approve the SSES, but that MWRA did, based on agreements DEP has with MWRA. DEP and Staff recommend that this condition has been met.

- **Canton must provide the engineering calculations to document the estimated I/I flow reductions achieved by work completed to date. This will be credited against the 1:1 mitigation requirement of Condition B.1.c.**

In 1999, Canton reported that it had removed 544,805 gpd (gallons per day). The WRC required that the engineering calculations be provided to document this. These calculations were provided by Canton. DEP discussed this with the MWRA. MWRA indicates that the overall flow trend for the community is downward. DEP and Staff recommend that this condition has been met. Staff suggests that Canton continue to monitor areas where I/I has been removed to assure that the removal has been successful.

- **Canton must provide a record of all sewer connections that have occurred since the January 29, 1998 decision.**

This was provided. Between January 1, 1998 and July 1, 2003, a total of 398 new connections were made to the Canton sewer system. Some of these (136) were infilling, which were accounted for in the original review of the IBT application. As required by the

Amended WRC IBT decision, Canton also completed a Comprehensive Wastewater Management Plan, which required additional I/I removal.

- **Canton must submit a revised streamflow monitoring plan, which better reflects the proposed reductions in pumping when streamflow approaches threshold levels. This was well illustrated in Figures 5A-5C. The narrative should describe what was proposed in these figures.**

This has been provided and staff feel that Canton has met this condition; however, staff caution that the proposed “cutback” rates occur over a very small range of flow thresholds, often less than one cfs. Canton should look at flow data to determine how fast these changes can occur and determine if they can operate their system this way. In addition, Canton should note that monitoring of flow at Milton Lower Mills should take into account the tidal effects at this site. Specifically the 100 cfs threshold should be monitored during low tide periods. These periods can easily be identified from real time flow data on the web.

- **Canton must install the stream gage at the Green Lodge site.**

With cooperation from the USGS, Canton is proceeding with the construction of an automated gage, with remote reading capabilities. This should be on-line in early 2004. The Town hopes to begin pumping from this well in December 2003, and, in the interim, will utilize the existing manual gage for monitoring purposes. Zuena added that the gauging information would be tied in to the town’s SCADA system so that changes in flow could be responded to immediately. Canton must notify WRC Staff when installation is completed. Staff recommends that the spirit of this condition is met and Canton should be allowed to proceed with use of the well.

Drury said that these were all pre-conditions for use of the well. On-going conditions will still be required. These are:

- **Documentation of the annual I/I survey and any reductions achieved must be reported to the WRC on an annual basis. In addition, Canton must provide MWRA data for comparison.**
- **A record of all new sewer connections per year must be submitted to the WRC annually, until the Town achieves its final level of sewerage.**
- **Canton must provide annual reports to the WRC documenting progress in meeting the 2:1 mitigation goal**
- **Canton will provide annual reports to the WRC documenting the disposition of the cost savings realized from use of Well #9.**
- **Within one year after Well #9 is operational and every year thereafter, Canton shall submit annual reports to the WRC, detailing gage readings from both the proposed Green Lodge gage and the Milton Lower Mills gage, and volumes pumped from Well #9.**

Tisa asked about the overall wastewater situation. DEP has reviewed the engineering calculations and has stated that the overall wastewater flow has been reduced.

V O T E	<p>McGinn moved, with a second by Giles, to find that Canton has met all the Interbasin Transfer approval conditions required prior to putting the well on line.</p> <p>The vote was unanimous of those present.</p>
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Agenda Item #5: Vote to accept Brockton's IBT Application to Purchase Water From Aquaria as Complete

Drury acknowledged the representatives from Brockton, Aquaria and WAA and summarized the status of the application.

Brockton filed a Notice of Project Change (NPC), as required by MEPA, for the Aquaria project on October 31, 2003. The NPC contained, among other things, the information necessary to evaluate Brockton's compliance with the water supply management criteria of the ITA. The WRC has stated that it will consider the NPC to be Brockton's portion of the Aquaria ITA application, in accordance with the March 1996 memo, which outlines how the WRC would evaluate this project. As stated in the August 2003 decision on the Aquaria portion of this IBT application and in the Secretary's Certificate on the Final EIR for the Aquaria project, any community wishing to purchase water will need to file an NPC with MEPA.

Brockton is proposing to purchase up to 7.57 mgd from the Aquaria plant in the Massachusetts Coastal basin (when it is operating at its full build-out of 10 mgd). Brockton is located mainly within the Taunton River basin. Its wastewater discharge is to a tributary of the Taunton River.

Brockton's portion of the Aquaria ITA application has been reviewed by DCR's Office of Water Resources, DEP's Office of Watershed Management and Southeast Regional Office and DFG's Riverways Program according to the Interbasin Transfer Regulations 313 CMR 4.04(5), to assure that all required information has been provided. Staff is recommending that the WRC accept this application as complete. By doing so, the WRC will not be passing judgment on the merits of the proposal. This will just give staff permission to begin the review and public comment period. The application will be reviewed for the water supply management criteria of the ITA.

DuBois stated that the WRC should be considering the impacts to Silver Lake and the Jones River from Brockton's use. The contract between Aquaria and Brockton should be part of the application. Drury stated that these issues went beyond the jurisdiction of the Interbasin Transfer Act. Spears provided written comment on behalf of Watershed Action Alliance.

It was stated that the Water Management Act should be amended to address registration renewals, the management of existing sources and mitigation of environmental impacts.

V O T E	<p>Rich moved, with a second by Giles, to find that Brockton's Interbasin Transfer application to purchase water from Aquaria is complete.</p> <p>The vote was unanimous of those present.</p>
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Agenda Item #3: Presentation – Water Needs Forecasts for the Mashpee Water District

Drury acknowledged representatives of the Mashpee Water District.

Mashpee and its sources are located in the Cape Cod basin. The District serves 96% of the Town's year-round population, or just over 14,000 people. Service population increases by approximately double during the summer months (April through September), adding about

another 14,000 customers. Generally, Mashpee uses almost twice as much water in the summer as it does in the winter.

The Water District is registered for 0.14 mgd under the Water Management Act. It is permitted to withdraw up to 1.22 mgd by 2005 and 1.30 by 2010. In 2002, the Water District used 1.15 mgd. Based on current trends, the District is predicted to need 1.30 by 2005. Therefore, the Water District is applying to DEP to increase its withdrawals in the Cape Cod basin. Much of the increase in water needs has been the result of adding services to replace private wells that have been affected by contamination sources.

Mashpee's water use is expected to increase to 1.99 mgd by 2025. This reflects an average day demand of 1.82 mgd during the winter months and 2.16 during the summer months.

A vote on these projections will be requested at the January meeting.

Agenda Item #6: Discussion – The Non-applicability of the ITA to the Dedham-Westwood Water District's Application for Membership in the MWRA

The Dedham-Westwood Water District (DWWD) is in negotiations with the MWRA Water Works Division to become a member community. The Interbasin Transfer Act and its regulations take jurisdiction over actions to increase the ability to transfer water. Although the WRC has a policy that an application by a new community for admission to a regional water or sewer system where an Interbasin Transfer of water is involved requires review under the Act, Staff opinion is that, although it is not currently a member of the MWRA, DWWD has always had the "ability" to obtain water under the MWRA Enabling Act by virtue of being successor to the Dedham Water Company.

Staff has been concerned about the precedent that could be inferred from this opinion. After discussions with DCR and MWRA Legal staffs, it was concluded that this would only apply to a community which had the same sort of property rights (i.e. ability to obtain water by virtue of being named in the MWRA Enabling Act). Any truly "new" community applying for membership in this or any other regional water supply system would be subject to review under the Interbasin Transfer Act.

Simonson suggested that this opinion was a violation of the public trust and urged the WRC to take jurisdiction over this application. She is concerned about the precedent-setting implications. Hartig reiterated that this did not have wide precedent-setting implications. Rich stated that the definition of the DWWD as a "new" MWRA community only referred to the fact that it has to pay the fees to join. McGinn stated that this was a "grandfathering" issue. Dedham was carried forward in the MWRA Enabling Act. They are only required to meet MWRA's criteria for entrance into the system. They are otherwise entitled to be members of the system.

Crossland stated that DWWD did have discussions and correspondence with the MWRA concerning the need for the District to pay fees for joining. The District undertook these discussions in the interest of their ratepayers, but they understand and acknowledge that they have not been contributing to the costs of the MWRA infrastructure. They understand that they need to meet the requirements in MWRA's OP 10 policy. DWWD has been through the ITA process. It is a huge undertaking. All the things that were required under that ITA approval are

the same things that would be required under any future ITA and MWRA review. DWWD is already doing these things. It is a long, tedious and expensive process that the District has already been through. Going through it again will not change how they manage the system. Giles stated that the WRC ought to seize those opportunities where government can do less process and get the same results. We ought to exercise good sense.

Spears said that the record should be consistent. The WRC should take jurisdiction, even if it is only for insignificance. Tisa asked if the WRC had any options. Drury stated that Staff opinion is that the WRC does not have jurisdiction in this case. Simonson said that the WRC could choose to take jurisdiction or not. Honkonen said that this was not scheduled for a vote and asked if the WRC wants to consider this further. Hartig stated that the issue of jurisdiction under the law is either you have it or you don't have it. Staff and Legal review of the issues here led us to the conclusion that the WRC does not have jurisdiction in this case. However, if the WRC believes that it does have jurisdiction, regardless of the Staff and Legal recommendation, it can take it, but DWWD would have the right to challenge this decision in court. The totality of the evidence reviewed leads staff and legal to believe that the WRC does not have jurisdiction in this case. McGinn stated that it was never his impression that there was ever going to be a vote on this.

Drury said that there are other communities, such as Reading, which have emergency connections to the MWRA, and are now applying for full membership. The WRC is taking jurisdiction over that application because their "ability" to take water from MWRA was restricted to emergency situations only. Staff is saying that DWWD is not jurisdictional because they have been named all the historical legislation concerning what is now the MWRA Water Works Division so they always had the ability to take water whenever they wanted. They have just never exercised that ability.

The WRC thanked Staff for their input and decided that further discussion of this issue was not necessary.

Other Business

Honkonen stated that the formal agenda was concluded but that he wanted to carry over an issue from last month, as requested by the WRC last month. At the July workshop two issues were identified (How can the WRC as a body help set water policy in Massachusetts and how can we integrate better with the Office of Commonwealth Development and other state agencies). Giles said she wasn't aware that that this was going to be discussed today. Honkonen said that this discussion can be deferred until next month. It will be on the formal agenda. Contreas suggested that Gina McCarthy be invited for the discussion on the OCD question. Honkonen said that he would extend the invitation.

Gildesgame noted that the IBT Guide would be posted on the web site. Honkonen stated that the WRC website is being revamped to provide more information to the public. He invited input from members and the public.

Meeting adjourned

Meeting minutes approved 7/8/04